



AN ACT REVISING INSURANCE LAWS PERTAINING TO VIATICAL SETTLEMENTS; PROHIBITING VIATICAL SETTLEMENT FRAUD AND PROVIDING REMEDIES AND PENALTIES; INCLUDING SUSPECTED VIATICAL SETTLEMENT FRAUD IN ACTIVITIES THAT MUST BE REPORTED BY INSURERS AND OTHERS; REVISING REQUIREMENTS FOR VIATICAL SETTLEMENT CONTRACT TERMS; LENGTHENING TO 3 BUSINESS DAYS THE AMOUNT OF TIME A VIATICAL SETTLEMENT PROVIDER HAS TO DEPOSIT PROCEEDS OF A SETTLEMENT INTO AN ESCROW OR TRUST ACCOUNT; ESTABLISHING CRITERIA FOR DETERMINING CONFLICT OF LAWS QUESTIONS; AMENDING SECTIONS 33-1-1301, 33-1-1302, 33-1-1303, 33-20-1308, AND 33-20-1314, MCA; AND PROVIDING EFFECTIVE DATES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 33-1-1301, MCA, is amended to read:

**"33-1-1301. Insurance, viatical settlement, medical care discount card, pharmacy discount card, and securities fraud education and prevention program -- definitions.** (1) The commissioner may:

(a) establish an insurance, viatical settlement, medical care discount card, pharmacy discount card, and securities fraud education and prevention program; and

(b) conduct investigations of insurance, viatical settlement, medical care discount card, pharmacy discount card, and securities fraud.

(2) As used in this ~~section~~ part:

(a) "medical care discount card" and "pharmacy discount card" have the meanings provided in 33-38-102; and

(b) "viatical settlement broker", "viatical settlement contract", and "viatical settlement provider" have the meanings provided in 33-20-1302."

**Section 2.** Section 33-1-1302, MCA, is amended to read:

**"33-1-1302. Insurance, viatical settlement, medical care discount card, and pharmacy discount**

**card fraud -- insurer.** (1) A person commits the act of insurance, viatical settlement, medical care discount card, or pharmacy discount card fraud when:

(a) in the course of offering or selling insurance, a medical care discount card, or a pharmacy discount card, the person misrepresents a material fact, known to the person to be untrue or made with reckless indifference as to whether it is true, with the intention of causing another person to rely upon the misrepresentation to that relying person's detriment; or

(b) with respect to a viatical settlement, the person violates the provisions of [section 3].

(2) A person commits the act of insurance fraud or viatical settlement fraud by engaging in any transaction, act, practice, course of business, or course of dealing that involves a violation of insurable interest laws.

~~(2)~~(3) The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose the penalties provided for in 33-1-317 for a violation of [section 3] or this section. Failure to pay a fine under this section results in a lien upon the assets and property of the person as provided in 33-1-318(3).

~~(3)~~(4) In addition to any penalty provided for in 33-1-317, the commissioner may require a person regulated under this title who commits insurance, viatical settlement, medical care discount card, or pharmacy discount card fraud to make full restitution to the victim for all financial losses sustained as a result of the fraud with interest of 10% a year from the date of the fraud plus any costs and reasonable attorney fees, less the amount of any income, refund, or other benefit received by the victim from the insurance, viatical settlement, medical care discount card, or pharmacy discount card.

~~(4)~~(5) The commissioner may require a person who commits ~~insurance fraud~~ a violation of this part to make full restitution to any ~~insurer, purported insurer, or insurance producer~~ person who may have sustained any losses as a result of the fraud with interest of 10% a year from the date of the loss plus any costs and reasonable attorney fees.

~~(5)~~(6) An insurer, insurance producer, or other person who sustained any losses and who was awarded restitution may bring suit to recover those sums, including any attorney fees, interest at 10% a year, and costs incurred in obtaining a judgment.

~~(6)~~(7) Failure of a person to pay any amount ordered under this section constitutes a forfeiture of the right to do business in this state.

~~(7)~~(8) A person who purposely or knowingly is involved in the misappropriation or theft of insurance

premiums or proceeds, viatical settlement proceeds, a medical care discount card fee, or a pharmacy discount card fee commits the offense of theft and deceptive practices and is punishable as provided in 45-6-301 and 45-6-317, and the commissioner may refer evidence concerning the violation to the attorney general or other appropriate prosecuting attorney.

~~—— (6) As used in this section "medical care discount card" and "pharmacy discount card" have the meanings provided in 33-38-102."~~

**Section 3. Viatical settlement fraud.** Viatical settlement fraud consists of but is not limited to the following committed by a person or the person's agents or employees:

(1) acts or omissions by any person who, knowingly and with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, engages in or permits the person's employees or agents to engage in acts that include but are not limited to:

(a) presenting, causing to be presented, or preparing with knowledge and belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, premium finance lender, life insurer, life insurance producer, or any other person false material information; or

(b) concealing material information as part of, in support of, or concerning a fact material to one or more of the following:

- (i) an application for the issuance of a viatical settlement contract or life insurance policy;
- (ii) the underwriting of a viatical settlement contract or life insurance policy;
- (iii) a claim for payment or benefit pursuant to a viatical settlement contract or life insurance policy;
- (iv) premiums paid on a life insurance policy;
- (v) payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or life insurance policy;
- (vi) the reinstatement or conversion of a life insurance policy;
- (vii) the solicitation, offer to enter into, or effectuation of a viatical settlement contract or life insurance policy;
- (viii) the issuance of written evidence of viatical settlement contracts or life insurance; or
- (ix) any application for, the existence of, or any payments related to a loan secured directly or indirectly by any interest in a life insurance policy.

- (2) employing any device, scheme, or artifice to defraud in the business of viatical settlements;
- (3) removing, concealing, altering, destroying, or sequestering from the commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements;
- (4) misrepresenting or concealing the financial condition of a licensee, financing entity, insurer, or other person;
- (5) transacting the business of viatical settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of viatical settlements;
- (6) filing with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing information about a material fact;
- (7) engaging in embezzlement, theft, misappropriation, or conversion of money, funds, premiums, credits, or other property of a viatical settlement provider, viatical settlement broker, insurer, insured, policy owner, or any other person engaged in the business of viatical settlements or life insurance;
- (8) knowingly and with intent to defraud entering into, brokering, or otherwise dealing in a viatical settlement contract the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy if the policy owner or the owner's agent intended to defraud the issuer of the policy;
- (9) attempting to commit or to assist, aid, or abet in the commission of or conspiring to commit the acts or omissions specified in this section; or
- (10) misrepresenting the state of residence of a policy owner to be a state or jurisdiction that does not have a law substantially similar to this part or Montana's Viatical Settlement Act, Title 33, chapter 20, part 13, for the purpose of evading or avoiding the provisions of Montana law.

**Section 4.** Section 33-1-1303, MCA, is amended to read:

**"33-1-1303. Reporting requirements.** (1) An insurer, insurance producer, or other person who has reason to believe that insurance, viatical settlement, medical care discount card, or pharmacy discount card fraud has occurred shall report the suspected fraud to the commissioner or to the insurance producer's or other person's insurer within 60 days of discovery of the occurrence. An insurer shall review a report given to the insurer, and if the insurer determines that there is a reasonable likelihood that fraud has occurred the insurer shall

forward the report to the commissioner within 30 days of receipt.

(2) In the absence of malice, an insurer, insurance producer, or other person may not be subjected to civil liability for reporting or providing information or otherwise cooperating with an investigation of insurance, viatical settlement, medical care discount card, or pharmacy discount card fraud."

**Section 5.** Section 33-20-1308, MCA, is amended to read:

**"33-20-1308. Terms of contract.** (1) A viatical settlement contract must be in writing. A viatical settlement provider shall establish in the contract the terms under which the viatical settlement provider will pay compensation or anything of value in return for the policyholder's or certificate holder's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

(2) A viatical settlement provider may not use a viatical settlement contract in this state unless the viatical settlement provider has filed the contract form with the commissioner and the commissioner has approved the contract form according to the provisions set forth in 33-1-501. The commissioner shall disapprove a viatical settlement contract form if, in the commissioner's judgment, the contract or any provision of the contract is unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the policyholder or certificate holder.

(3) Each viatical settlement contract entered into in this state must contain a provision enabling the policyholder or certificate holder to rescind the contract not later than the 30th day after the date on which the contract is executed by all parties or not later than the 15th day after the policyholder or certificate holder receives the viatical settlement proceeds, whichever is the longer period. In order to rescind a contract, a policyholder or certificate holder who has received the proceeds shall return them to the viatical settlement provider or financing entity.

(4) If a viatical settlement provider enters into a viatical settlement that allows the viator to retain an interest in the policy, the viatical settlement contract must contain all of the following provisions:

(a) that the viatical settlement provider shall effect the transfer of the amount of the death benefit only to the extent or portion of the amount viaticated. Benefits in excess of the amount viaticated must be paid directly to the viator's beneficiary by the insurance company.

(b) that the premiums to be paid by the viatical settlement provider and the viator will be apportioned

unless the viatical settlement contract specifies that all premiums must be paid by the viatical settlement provider. The contract may also require that the viator reimburse the viatical settlement provider for the premiums attributable to the retained interest.

(c) that the viatical settlement provider shall, upon acknowledgment of the perfection of the transfer, either:

(i) advise the insured in writing that the insurance company has confirmed the viator's interest in the policy; or

(ii) provide the insured with a copy of the instrument provided by the insurance company to the viatical settlement provider that acknowledges the viator's interest in the policy."

**Section 6.** Section 33-20-1314, MCA, is amended to read:

**"33-20-1314. Payment to escrow or trust account -- lump-sum payment.** (1) ~~Immediately upon~~ Within 3 business days after receipt of documents from the policyholder or certificate holder effecting the transfer of the insurance policy or certificate, the viatical settlement provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a bank approved by the commissioner, pending acknowledgment of the transfer by the issuer of the life insurance policy. The trustee or escrow agent shall transfer the proceeds due to the policyholder or certificate holder immediately upon receipt of acknowledgment of the transfer from the insurer.

(2) A viatical settlement provider shall make payment of the proceeds of a viatical settlement contract in a lump sum except as provided in this subsection. A viatical settlement provider may not retain any portion of the proceeds. A viatical settlement provider may make installment payments only if the viatical settlement provider has purchased an annuity issued by an authorized insurer or a similar financial instrument issued by a financial institution authorized to engage in the business of a financial institution in this state.

(3) Failure by the viatical settlement provider to tender the viatical settlement by the date disclosed to the policyholder or certificate holder renders the contract void."

**Section 7. Conflict of laws.** (1) If there is more than one owner on a single life insurance policy and the owners are residents of different states, the viatical settlement contract is governed by the law of the state in which the owner having the largest percentage ownership resides or, if the owners hold equal ownership, the

state of residence of one owner agreed upon in writing by all of the owners. The law of the state of the insured governs if equal owners fail to agree in writing upon a state of residence for jurisdictional purposes.

(2) (a) A viatical settlement provider from this state who enters into a viatical settlement contract with a viator who is a resident of another state that has enacted statutes or adopted regulations governing viatical settlement contracts is governed in the effectuation of that viatical settlement contract by the statutes and regulations of the viator's state of residence.

(b) A viatical settlement provider from this state who enters into a viatical settlement contract with a viator who is a resident of another state that has not enacted statutes or adopted regulations governing viatical settlement contracts is governed in the effectuation of that viatical settlement contract by the laws of this state. The viatical settlement provider shall give the viator notice that this state regulates the transaction into which the viator is entering. The viatical settlement provider shall maintain all records required by this state and use forms approved in this state.

(3) If there is a conflict in the laws that apply to a viator and a viatical settlement purchaser in any individual transaction, the laws of the state that apply to the viator take precedence and the viatical settlement provider shall comply with those laws.

**Section 8. Codification instruction.** (1) [Section 3] is intended to be codified as an integral part of Title 33, chapter 1, part 13, and the provisions of Title 33, chapter 1, part 13, apply to [section 3].

(2) [Section 7] is intended to be codified as an integral part of Title 33, chapter 20, part 13, and the provisions of Title 33, chapter 20, part 13, apply to [section 7].

**Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 10. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 5] is effective January 1, 2010.

- END -

I hereby certify that the within bill,  
SB 0151, originated in the Senate.

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Secretary of the Senate

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.



SENATE BILL NO. 151  
INTRODUCED BY J. BRUEGGEMAN  
BY REQUEST OF THE STATE AUDITOR

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